

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. Z-071 40 8098 D1
Issued to: William DeWitt COOPER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2179

William DeWitt COOPER

This appeal has been taken in accordance with Title 46 United States code 239b and Title 46 Code of Federal Regulations 5.30-1.

By order dated 8 December 1977, an Administrative Law Judge of the United States Coast Guard at New York, New York, after a hearing at New York, New York, on 8 and 26 September and 3 and 18 October 1977, revoked Appellant's document upon finding him guilty of conviction for a narcotic drug law violation. The specification found proved alleges that Appellant was convicted on 22 February 1977, in the criminal court of the City of New York, a court of record, of a violation of the Narcotic Drug Laws of the State of New York, to wit, section 220.03 of the Penal Law of the State of New York.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced into evidence four documents.

Appellant offered no evidence in defense.

On 8 December 1977, the Administrative Law Judge entered a written decision in which he concluded that the charge and specification as alleged had been proved. He then entered an order of revocation.

The decision was served on 15 December 1977. Appeal was timely filed on 28 December 1977.

FINDINGS OF FACT

Appellant, while the holder of the captioned document, was convicted on 22 February 1977, upon his plea of guilty, in the Criminal Court of the City of New York, of the criminal possession of a controlled substance in the seventh degree (Class A misdemeanor) involving quantities of heroin and methadone, in

violation of section 220.03 of the Penal Law of the State of New York.

BASES OF APPEAL

This appeal has been taken from the decision and order of the Administrative Law Judge. It is contended that "the statute and implementing regulations are unconstitutional in that they operate to deprive the appellant of property without due process of law in contravention of the Fifth Amendment of the Constitution of the United States."

APPEARANCE: The Legal Aid Society, Staten Island, New York, by
Timothy J. O'Brien, Esq.

OPINION

Appellant cites no authority in support of his position. Nevertheless, because I do not question that it would be improper to suspend or revoke a merchant mariner's document without due process of law [see, e.g., In Re Merchant Mariner's Documents, 91 F. Supp. 426 (N.D.C.A.L.i., 1949); Parker v. Lester, 227 F. 2d 708 (9th Cir., 1955)], I discern no reason to address the issue of whether the right to continue to hold such a document is a "property right" as that term is commonly understood.

It is sufficient to observe that procedural due process was satisfied by providing Appellant with adequate notice and a full hearing pursuant to the requirements of the Administrative Procedure Act, 5 U.S.C. 551 et seq. See Decision on Appeal no. 1898; Annot., 98 L.Ed. 851 (1953), 855-856.

Substantive due process is satisfied if the sanction at issue is prescribed by legislation the enactment of which is within the scope of legislative authority, and the sanction imposed reasonably is related to the purpose of the legislation. Id., 852. I am satisfied that both of these requirements are met by the statute in question, 46 U.S.C. 239b. See also, Decisions on Appeal Nos. 954, 1898; 53 CJS Licenses §44 (1948).

As the requirements of due process were met, Appellant's contention on appeal is rejected.

ORDER

The order of the Administrative Law Judge, dated at New York, New York, on 8 December 1977, is AFFIRMED.

R. H. SCARBOROUGH

Vice Admiral, U. S. Coast Guard
ACTING COMMANDANT

Signed at Washington, D. C., this 3rd day of January 1980.

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